LEGISLATIVE REVIEW PROJECT

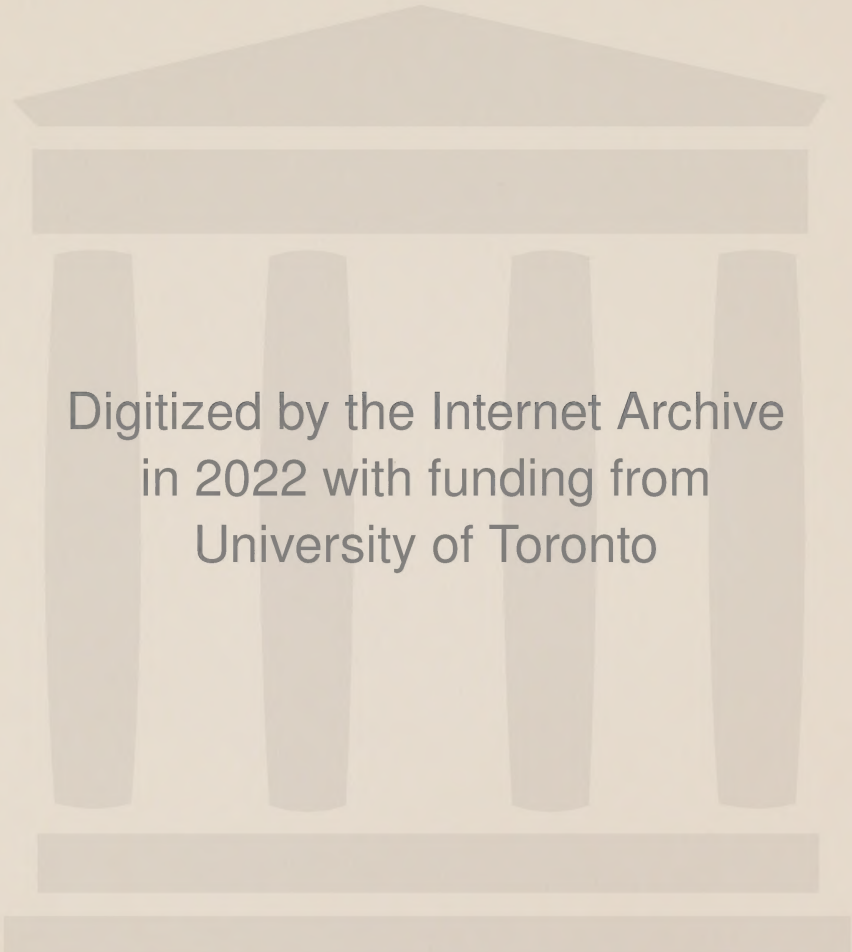
SUPPLEMENTARY REPORTS TO THE DIRECTIONS REPORT

PART III - CONSUMER CREDIT

1988

Ontario

Ontario Ministry of Consumer and Commercial Relations



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LEGISLATIVE REVIEW PROJECT

SUPPLEMENTARY REPORTS

The following are Supplementary Reports to the Directions Report, which has been submitted to the Ministry of Consumer and Commercial Relations by the Legislative Review Project.

These Supplementary Reports provide the details of the research, consultation and analysis that led to the Directions Report. They also include an extensive summary of the Review Projects proposals: proposals aimed at ensuring a fair marketplace that will benefit Ontario consumers and businesses alike.

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PART III - CONSUMER CREDIT

28. Consumer Credit

CONSUMER CREDIT ISSUES

BACKGROUND

It is recognized by many consumers, business people, and regulators that Ontario's consumer credit laws are in need of a thorough review. Many of the laws were enacted over 20 years ago, and are no longer relevant in today's marketplace. Most of the laws are written in highly technical and legalistic language. The "plain language" trend in the drafting of laws requires that Ontario's consumer credit laws be entirely rewritten.

As part of the Legislative Review Project, Ontario's consumer credit laws have been compared with the laws in other jurisdictions across Canada, the United States, and the United Kingdom. It is clear from a review of these laws that Ontario lags far behind in the regulation of consumer credit. Recent advances in technology and the marketing of consumer credit have rendered many of Ontario's laws obsolete. The result is that, in Ontario, a great number of consumer credit transactions, and the creditors who engage in them, are subject to no legislated standards.

It is not known exactly how that has affected Ontario consumers. Surveys conducted by the Ministry of Consumer and Commercial Relations indicate that only a fraction of consumers who feel they have a legitimate complaint actually contact Ministry officials. Consumers who have complaints about creditors are even less likely to contact government or any third party) for assistance, for fear of being considered unwilling, or unable, to pay their debts. Being "in trouble" with a creditor can be a source of embarrassment to many consumers. Consequently, the implications of this lack of regulation for Ontario consumers are not currently known.

As a result of the analysis undertaken by the review team with respect to the credit area, it is suggested that the Ontario government undertake a more comprehensive study of its consumer credit laws.

The purpose of such a study would be to formulate a clear view of the government's appropriate role in the regulation of consumer credit, and to provide a policy framework for the restructuring of Ontario's credit laws in order to meet the needs of its citizens.

GENERAL PROBLEM AREAS

The existing legislation (i.e. the Consumer Protection Act) does not adequately deal with the present and future marketplace.

As new technology and a wider range of products are introduced in the financial service sector, consumers are using credit in many more transactions. Complaints about inaccuracies in record keeping are often a source of consumer dissatisfaction.

Businesses are also expressing increasing frustration with Ontario's present consumer credit laws. The laws are considered to be too discrete, and too complex for the average layperson. There are at least thirteen separate statutes which impact on consumer credit, and most of these are written in highly technical, legal language.

SPECIFIC ISSUES

Part I - Disclosure

1) The Cost of Borrowing

The present definition of the cost of borrowing is far too complicated, and is unclear to both consumers and businesses.

The definition should be in plain language and should be defined to mean any change beyond what the cash consumer pays.

2) Tolerances

The basic requirements of any disclosure system are that the credit charge be disclosed to the consumer in a dollar amount and in an amount expressed as an annual interest rate. As the accurate calculation of the annual interest rate is difficult, credit legislation allows "tolerance" levels, within which inaccuracies in the rate will be allowed. Ontario's tolerance level is the highest in Canada, and should be reduced.

3) Specific Disclosure Requirements

Ontario's approach to credit disclosure is quite confusing, as a number of different types of credit transactions are combined into only three sections of the Consumer Protection Act, and some credit transactions, such as variable lending and variable rates, are not covered. Separate disclosure provisions for each type of credit transaction would be preferable.

4) Leases

Since leases with an option to purchase closely resemble credit transactions, consideration should be given either to including such leases in the definition of a consumer credit sale, or to enacting specific disclosure provisions for leases.

5) Changes to Contracts

Credit grantors sometimes unilaterally change certain terms and conditions of their contracts, in accordance with a clause in the original contract allowing them to make such a revision. An example is credit card issuers, who periodically revise interest rates, as market conditions change, with notice to their customers. The revised credit legislation should state whether changes are allowed, and, if so, what notice period should be provided to consumers. A balance needs to be struck between the two competing interests of "informed consent" and "marketplace flexibility".

6) Advertising

The purpose of rules governing the advertising of credit is to ensure that consumers are not misled by "easy" credit terms, which are either misleading or incorrect. A number of situations have arisen recently, such as in the automobile area, in which "3.9% financing or a $750 rebate" is actually misleading, as the annual interest rate is much higher. The revised legislation must more clearly delineate the rules on advertising so that they are more consistent with modern promotion practices.

Part II - Fair Billing

1) Prepayments

The present legislation regarding prepayments and refunds is extremely difficult for anyone to understand, does not give consumers the right to prepay, includes an outdated formula, and is not clear with respect to refunds owed to consumers who consolidate or refinance their debts.

The new legislation should state clearly whether consumers are entitled to prepay their debts before they become due, and if they do so, whether they are entitled to a refund of any monies paid towards "unearned" interest charges.

The complex formula to calculate refunds should be replaced by a straightforward formula based on the daily percentage rate of the agreement and the number of days which the agreement has been in existence.

2) Method of Determining Credit Card Balances

Credit grantors use many different methods for determining credit card balances. The existing legislation provides for the "previous balance" method to be used, whereas most financial institutions use the "average daily balance" method.

The "previous balance" method of determining credit card balances should be reviewed, with a view to making the method of determining balances uniform across Ontario. If the "average daily balance" method were to be selected, it would have to be fully vetted with the retailers who commonly use the previous balance method.

3) Statements of Account

Statements of account provide essential information to consumers with long term debt obligations. Although Ontario's present legislation is silent on statements of account, other jurisdictions require sellers to provide consumers with statements at various intervals during the lifetime of the agreement, and at the end of the agreement, to confirm that payment in full has been made. Whether consumers should be entitled to statements free of charge anytime, or up to once a month, and whether sellers and lenders should charge consumers a reasonable fee for other statements, are issues which should be examined.

4) Mailing Statements and Posting Payments on Time

Some jurisdictions have specific rules to ensure that consumers are provided with the full benefit of a grace period. For example, in Quebec, British Columbia and the United States, credit statutes require that billing statements be mailed to or received by a consumer at least 21, 10 or 14 days, respectively, before the expiry of the grace period. Rules respecting the mailing of statements or the posting of payments should be considered if credit grantors are not performing their obligations promptly.

5) Returned Goods

Upon return of goods by a consumer, the business must notify the credit card issuer of the return by way of a credit to the consumer's account for the value of the returned goods. As these credit adjustments are not always processed quickly, some jurisdictions have included in their credit legislation a requirement that notification be made "promptly". Consideration should be given to requiring merchants to notify credit card issuers promptly of any returned goods.

6) Credits to Consumers' Accounts

The American Consumer Credit Protection Act provides for a return to the consumer of any credit held in an account for more than six months, whereas Ontario's legislation is silent on this matter.

If Ontario consumers experience difficulty in getting refunds from credit grantors, rules should be considered requiring a refund of surpluses to consumers after a certain period of time.

7) Access To Consumers' Accounts

Some financial institutions have used a consumer's bank account to cover debts outstanding on a credit card with the institution, without the consumer's authorization. At issue is whether Ontario's new legislation should prohibit financial institutions from accessing the deposit of accounts without the express consent of the customer.

8) Priority of Payments

Some jurisdictions provide rules regarding the priority of payments (i.e. payments to be applied toward credit charges before principal), in order to ensure that the portion of the debt which has the greatest potential of escalating quickly is reduced. The practices of Ontario credit grantors with respect to priority of payments needs to be researched. Rules regarding priority of payments are necessary if there is evidence that credit grantors are applying payments in a manner that is detrimental to the interests of consumers.

9) Cash Discounts

In order to prevent the practice of "discounting", some credit card issuers may be refusing to extend credit card privileges to businesses who offer discounts to cash customers. Certain jurisdictions (for instance, British Columbia) have prohibited this practice on the part of card issuers.

10) Unsolicited Credit Cards

Ontario's existing legislation limits the liability of consumers who receive unsolicited credit cards, so that they are liable only if they requested or accepted the card in writing, or if they use the card. Some jurisdictions totally prohibit the mailing of cards. Further research with respect to this problem is needed to determine whether Ontario's approach to regulating the practice should be reviewed.

11) Increasing Consumers' Credit Limits

Consumers contacted by the review team expressed concern over the practice of increasing credit limits without the consumer's express consent. This practice is not permitted under Quebec's legislation, and further analysis is necessary to determine whether a similar provision should be introduced in this Province.

12) Unauthorized Use of Credit Cards

Many jurisdictions (e.g. U.S., Quebec, B.C., Manitoba, and Alberta) have laws limiting the consumer's liability to $50 for the unauthorized use of credit cards. Additional rules are often provided with respect to the notification process.

At issue is whether Ontario should enact rules which would limit the consumer's liability for unauthorized use of the credit card to $50 and whether the consumer should be liable for any unauthorized purchases made after the notification. Should consumers be entitled to notify card issuers verbally? Where a consumer alleges that a purchase was not authorized by him, should the burden be on the credit card issuer to prove that the purchase was authorized?

13) Billing Errors

A fundamental component of a comprehensive "fair billing" legislative framework is a set of rules governing the resolution of billing disputes. Some jurisdictions (e.g. U.S. and Quebec) have enacted legislation to encourage the speedy resolution of billing disputes. It generally includes provisions regarding time periods for response, evidence to be produced, limitations on collection activities, and negative credit reports. If research shows that Ontario credit grantors do not resolve disputes in a satisfactory manner, error resolution rules should be enacted.

14) Electronic Fund Transfers (EFTS)

The lack of signatures and the limited documentation available with electronic payment systems raise the issues of adequate information disclosure and identification verification. American legislation with respect to EFTs is quite extensive, whereas neither the federal nor provincial governments in Canada have legislation in this important and expanding area.

Some of the important issues covered by American legislation relate to contractual disclosure requirements (i.e. type of information required in EFT agreements), pre-authorized transfers (i.e. rules for distribution of a consumer's funds to authorized third parties), rules for error resolution, unauthorized use of EFT cards, and liability of financial institutions in the event that they do not meet their statutory and contractual obligations to their customers. Further research is required in this area regarding the need in Ontario for legislation regarding electronic fund transfers.

Part III - Consumer Remedies and Defences

1) Liability of Credit Grantors

Concerns in this area include the responsibility of the credit grantor in the event that the goods purchased with credit are found to be defective. Consideration should be given to enacting legislation which makes credit card issuers and purchase-money lenders who enter into agreements with merchants regarding the extension of credit to consumers, equally liable for defects, breach of contract, and

misrepresentations as the businesses themselves.

(2) Limitations on Liability

Limitations on a credit grantor's liability vary by jurisdiction, and range from full liability, to the amount "owing", the amount "paid", or to liability only if the credit grantor commences an action against the consumer. If limitations on a credit grantor's liability are considered desirable, the liability should be limited to the amount owing to the credit grantor under the contract.

3) Cooling-off Period for Credit Purchases

Some jurisdictions have adopted a "universal" approach by providing a cancellation period for the purchase of goods on credit (e.g. Quebec and the U.K.), whereas Ontario has taken an industry-specific approach (i.e. in the door-to-door sales and condominium areas). The need for a universal cooling-off period for large credit purchases and the implications of such a period for credit purchases must be researched.

4) Cancellation of Installment Sales Contracts

The United Kingdom allows consumers to cancel installment sales contracts at any time during the lifetime of the contracts, provided certain conditions are met. The need for such a provision in Ontario should be investigated.

(5) Guarantors

Certain jurisdictions give guarantors of consumer credit agreements the same rights of disclosure, cancellation, and notice as consumers, and require creditors to notify them of their responsibilities in a prescribed manner. Ontario should consider including such provisions in its legislation. At issue is whether creditors should be required to furnish guarantors with a prescribed statement informing the guarantor of his potential liability for the consumer's debt.

Part IV - Default

1) Late Payment or Default Penalties

Unlike Ontario, many jurisdictions place limitations on the amount of default charges which a creditor may impose on a debtor. If credit grantors are charging consumers excessive "late payment" or default charges, consideration should be given to imposing reasonable limitations on the amounts of default charges creditors may impose.

2) Relief from Forfeiture

Many jurisdictions attempt to provide some measure of relief to the consumer on default. A number of jurisdictions have

softened the impact of "acceleration" clauses (requiring immediate payment of an entire debt, once a consumer defaults on an installment payment) by requiring creditors to provide consumers with written notice and with a reasonable time to remedy a default by paying the installment payment. In Quebec, courts are empowered to "look behind" the terms of a written agreement and determine the reason for a consumer's violation of his or her payment obligations. Defective goods may be ordered returned to a business, and payment terms may be tailored to meet the needs of the individual consumer.

If acceleration clauses are used in Ontario and are unduly detrimental to the interests of consumers, consideration should be given to prescribing rules regarding acceleration clauses.

Research should also be conducted to determine the need in Ontario to authorize consumers to petition a court for relief during debt recovery proceedings.

3) Repossession and Seizure

Many jurisdictions, including Ontario to a limited extent, prescribe rules which must be followed by creditors who repossess purchased goods or seize other of the debtor's possessions in order to satisfy a debt. However, Sections 22 and 23 of the present Consumer Protection Act could likely be strengthened through some specific prohibitions, as well as the inclusion of specific factors for a judge to consider in deciding whether a creditor should be allowed to repossess goods where 2/3 or more of the purchase price has been paid but default has occurred. Clear rules regarding the notice and means of repossession should be considered. The exemptions of certain goods from seizure need to be updated. Finally, consideration should be given to consolidating the resale rules, set out in the Ontario Personal Property Security Act, into the overall consumer protection legislation dealing with credit.

4) "Seize or Sue"

Many jurisdictions in Canada and elsewhere have enacted "seize or sue" laws, whereas Ontario has no such provision in the present Consumer Protection Act. Such laws require creditors to choose between two courses of action when pursuing a consumer for an unpaid debt - either repossess the goods, or let the consumer keep the goods and instead sue for the money owing. A problem sometimes occurs when consumers are sued for deficiencies when the repossessed good is sold for less than the debt owed. Research should be conducted on the need in Ontario for a "seize or sue" law.

5) Wage Garnishment

Ontario's rules regarding wage garnishment are set out in the Wages Act and in the rules of the Small Claims Court.

A court will not authorize a wage garnishment unless there has been a court judgment conforming that a debt is owed. Any clause in an agreement authorizing the credit grantor to garnishee a consumer's wages (assignment of wages clause) without a court judgment is void. Credit unions are exempt from this provision.

Consideration should be given to reviewing the exemption granted to credit unions with respect to wage assignments. Some examination of the similarities and differences between wage assignments and pre-authorized fund transfers should also be undertaken. The provisions of the Wages Act regarding wage garnishment should be incorporated, along with the credit provisions of other Ontario statutes, into a comprehensive Consumer Credit Act.

Part V - Trade Practices

1) Unconscionable Credit Transactions

Ontario's legislation relating to excessive cost of loan transactions is covered by the Unconscionable Transactions Relief Act. At issue is which is the most appropriate legal mechanism for dealing with unconscionable credit transactions.

2) Equal Credit Opportunity

The Ontario government adopted the "Equal Credit Opportunity Guidelines and Principles" in 1975, after consultation with the credit-granting industry. In the United States, rules prohibiting discrimination in credit transactions have been enacted by way of legislation, at both the federal and state levels. Prior to the introduction of any similar legislation in Ontario, further research is warranted to determine whether the existing Ministry guidelines are working.

3) Soliciting in the Home; Soliciting Minors

The United Kingdom legislation prohibits solicitation of credit "off trade premises" and soliciting minors for credit. Research should be conducted to determine whether high pressure salesmanship of credit, either in consumers' homes or with respect to minors, is prevalent, and whether such practices should be prohibited.

4) Oppressive Clauses

Many jurisdictions have enacted special rules concerning clauses which impose onerous requirements on consumers. Examples include "balloon payments" (where the last installment exceeds all other low payments by a considerable amount); using "confession of judgement" clauses (having the consumer agree to any action which the creditor may commence against him or her for payment of the debt, thereby waiving

rights to a court hearing); restricting a consumer's right to move or sell goods purchased on credit without the seller's consent; allowing the seller to determine whether or not secured goods are in jeopardy; including demand payments despite the installment payment schedule; including provisions exempting sellers from responsibility for the representations made by their salespeople during the course of the sale; and using "conditional ownership" clauses in credit card master agreements. If Ontario credit grantors use such clauses in consumer credit contracts, consideration should be given to prohibiting them.

Part VI - Miscellaneous Issues

1) Pawnbroking

As pawnbroking is, in essence, a credit transaction, consideration should be given to reviewing Ontario's Pawnbrokers' Act, and including it in the new consumer protection credit legislation, as it is in the United Kingdom.

2) Credit Insurance

The practice of requiring consumers to purchase insurance for their goods before credit will be extended to them has caused some concern among regulators. Some jurisdictions have prohibited this practice, and others have enacted special rules, such as requiring proof that insurance has been purchased on behalf of the consumer by the credit grantor, or including insurance charges in the calculation of the cost of borrowing if the insurance is mandatory.

3) Exemptions from Consumer Credit Legislation

Many jurisdictions exempt certain types of lenders and transactions from their consumer credit legislation.

Exemptions from disclosure provisions may include overdrafts, non-commercial lenders, credit transactions with no fixed payments or dates, student loans, loans advanced on the security of a life insurance policy, credit unions and pawnbrokers.

Full exemptions from consumer credit legislation may include real estate, monetary limitations and public utilities.

Exemptions for certain types of transactions should be provided where the application of the legislation would be inappropriate.

SUMMARY OF RECOMENDATIONS

Part I - Disclosure

The Cost of Borrowing

1) The term "the cost of borrowing" should be replaced with the plain language term, "the credit charge."

2) The definition of credit charge should be in plain language, should be defined to mean any charge beyond what the cash consumer pays, and should contain examples of specific inclusions and exclusions.

Tolerances

3) The tolerance level in Ontario's Consumer Protection Act should be reduced from 1% to 1/8%. However, this rule should not apply to certain types of credit transactions in which the calculation of the annual interest rate is impossible to be stated within such accuracy (e.g. contracts with irregular payment schedules).

Section 19 - Executory Contracts

4) The "executory contract" provision in the Consumer Protection Act should be organized into two separate provisions: one for future goods or services, and one for credit.

5) Among the items which should be disclosed in contracts regarding future goods or services are the following:

a) name, address and telephone number of the seller;

b) a clear description of the goods or services, including the model or serial number, if known;

c) the price of each item comprising the goods or services;

d) any installment or delivery charges;

e) any additional charges and a description of such charges;

f) the total price;

g) the deposit, if any;

h) a description of any trade-in, and the amount being allowed for it;

i) the amount owing (total price less deposit or

trade-in), and when it is due;

j) the estimated delivery or performance date.

6) The above provision would be a minimum disclosure requirement for all consumer transactions. However, it could be supplemented or completely replaced by disclosure provisions in industry-specific legislation (e.g. door-to-door sales, new homes, health clubs (as defined in the Ontario Prepaid Services Bill).

Section 24 - Installment Sales Credit and Loans

7) The provisions respecting disclosure for loans ("lender credit") and for installment sales credit ("seller credit") should be contained in two separate sections.

8) For installment sales credit, the following information should be disclosed in consumer contracts:

a) all the information required to be disclosed under the section regarding future goods or services, plus:

b) the credit charge, if any, expressed in dollars and in an annual percentage rate;

c) charges for insurance;

d) charges for searches, filing, or registration fees required to be paid to a government authority in connection with the credit transaction ("official fees");

e) total charges (credit charge plus other charges);

f) if security is taken, a statement to this effect and a description of the security, including a serial or model number;

g) number, amount, and due dates of installment payments;

h) a statement of the consumer's prepayment rights (this will be discussed in a later section);

i) the charges which a consumer will have to pay if his installments are late or if he falls into arrears. These charges would be expressed in dollars and also as an annual percentage rate.

9) For loans, the following information should be disclosed in consumer contracts:

a) name, address and telephone number of lender, and the address and telephone number at which the payments are to be made, if different from that of lender;

b) the principal, and when it will be advanced to the consumer (if different from the date of the contract). If the principal is to be advanced to the consumer in installments (e.g. for a home improvement project), special additional disclosure rules should be required, as in the Manitoba Consumer Protection Act. For example, the consumer should only be charged interest on the parts of the principal actually advanced to him;

c) the same information required to be disclosed for installment sales credit, sections b) - (i). However, sections (g) - (i) do not have to be followed if the loan is repayable on demand as opposed to in installments. In such a case, however, the contract must state clearly and conspicuously that repayment is to be made on demand.

10) The sections should be written in plain language.

11) The disclosure rules should apply whenever a contract is paid in more than one installment, regardless of whether a credit charge is imposed.

12) The exemption of credit unions from the disclosure rules should be re-examined.

13) It is not recommended that provisions allowing variable rate lending be introduced until the implications of such lending, particularly with respect to low-income consumers, are fully reviewed.

Section 25 - Variable Credit

14) The section should be rewritten in plain language, so that consumers and businesses may readily understand it.

15) Master agreements should be required to contain more than just a statement of the card issuer's annual percentage rate. Other information which should be in master agreements should include the following:

a) the name, address and telephone number of the seller or the lender (for billing inquiries and/or notification of loss or theft of the credit card);

b) membership fees or annual fees;

c) service or transaction charges, or the manner in which they are calculated;

d) the manner of determining the balance on which the credit charge is based (whether it is an adjusted balance, an average daily balance, etc.);

e) the grace period, if any, during which the consumer may pay without incurring any credit charge;

f) any exception to the grace period (e.g. loans in the form of "cash advances," where the interest runs from the time the consumer is given the money);

g) the minimum payment that is required, or the method of determining it;

h) how often billing statements will be sent to the consumer and at what periods payments are to be made (e.g. once every four weeks);

i) the credit limit, if any;

j) the consumer's liability for unauthorized use of the card;

k) a statement of the consumer's rights and responsibilities regarding errors in the billing statements.

16) This information should be required to be given not only in the master agreements, but also in any application forms, so that consumers may easily compare the terms offered by other card issuers before applying for the cards.

17) Consideration should be given to requiring more information to be disclosed in monthly statements. Examples of information which should be given in monthly statements are as follows:

a) a conspicuous statement on the front of the billing statement of the annual rate of interest;

b) the balance at the beginning of the month;

c) the balance at the end of the month;

d) the balance on which the credit charge was computed;

e) the credit charge (in dollars);

f) purchases and payments made by the consumer during the month;

g) an identification of the purchases (see further discussion below);

h) the due date of the payment (the "grace period");

i) any service, transaction or activity charges for the month and the manner in which they were calculated;

j) the required minimum payment.

18) Consideration should be given to replacing the requirement that monthly statements contain "the identity" of the goods or services purchased, with "a brief description of the purchase, sufficient to enable the consumer to identify the transaction." However, thought should be given to the practical implications of such a provision. Credit grantors might consider that, for example, an invoice number on the consumer's receipt would be sufficient for identification purposes, whereas a consumer would not.

19) Consideration should be given to allowing provincially-regulated financial institutions to offer credit cards to consumers. If given approval, the disclosure provisions relating to variable credit in the Consumer Protection Act should be amended to expressly include financial institutions other than banks. On the other hand, there may be sufficient dissimilarities between variable credit offered by sellers and variable credit offered by financial institutions that they should be governed by two separate disclosure provisions. This is the approach taken by the new Alberta Consumer Credit Transactions Act.

20) Consideration should be given to enacting special disclosure provisions for "semi-variable" credit transactions such as long term contracts for telephone services, cable television, hydro, etc. This would include information to be disclosed in initial agreements with consumers as well as in the billing statements sent to consumers.

Leases

21) Since leases with an option to purchase closely resemble credit transactions, consideration should be given either to including such leases in the definition of a consumer credit sale, or to enacting specific disclosure provisions for leases.

Consolidation or Refinancing

22) Where a consumer consolidates more than one credit agreement, or refinances his debts, a new contract should be required to be drawn up with the same disclosures as regular credit transactions.

23) Consideration should be given to requiring additional disclosures where debts are consolidated or refinanced, such as the additional costs involved, or the refund owing to the consumer.

Summary of Proposals Regarding Disclosure in Credit Agreements

24) There should be separate disclosure rules for each type of the following credit transactions:

- o future goods or services;
- o installment sales credit;
- o loans;
- o variable credit offered by retailers;
- o variable credit offered by financial institutions other than banks;
- o long term goods or services (e.g. telephone, cable television, hydro);
- o leases;
- o consolidation or refinancing.

25) Consideration should be given to adopting model disclosure forms for each type of credit transaction. Credit grantors who use such forms would be assured of complying with the legislation.

26) All written disclosures should be required to be given "clearly and conspicuously." Consumer contracts should be fully completed by the seller or lender before being offered to the consumer for his signature.

27) Consideration should be given to requiring credit grantors who negotiate their consumer agreements in person to give certain material disclosures verbally.

Changes to Contracts

28) With regard to variable credit (credit cards), the Consumer Protection Act should be amended to allow credit grantors to change their interest rates and membership or transaction fees, upon 30 days' notice to their customers.

29) With regard to installment sales credit and installment loans, there should be no changes allowed in the original terms of the agreement without the express consent of the consumer. This proposal is subject to change depending on the decision regarding variable lending (where the interest rate varies according to the market rate).

Advertising

30) The Consumer Protection Act provisions regarding the advertising of credit should be made clearer and more consistent with modern promotion practices.

31) Special advertising provisions should be enacted to cover lease transactions. (See, for example, the Alberta Consumer Credit Transactions Act, the British Columbia Consumer Protection Act, and the United States Consumer Credit

Protection Act.)

32) In order to rectify the "cash rebate" problem in automobile sales, cash rebates, even if given by a third party such as a manufacturer, should specifically be required to be included in the credit charge. Also, sellers as well as lenders should be required to adhere to the credit advertising rules of the Consumer Protection Act, even if the sellers are not providing the credit.

Part II - Fair Billing

Prepayments

33) The Consumer Protection Act should state clearly that consumers are entitled to prepay their debts before they become due, and that, if they do so, they are entitled to a refund of any money paid towards "unearned" interest charges.

34) The complex formula in the Consumer Protection Act to calculate refunds should be replaced by a straightforward formula based on the daily percentage rate of the agreement and the number of days which the agreement has been in existence. No penalty beyond this amount should be allowed to be retained by the lender. (See Bank Act, Alberta Consumer Credit Transactions Act, British Columbia Consumer Protection Act.)

35) The Consumer Protection Act should state clearly that consumers who consolidate or refinance their debts are also entitled to a refund.

Late Delivery of Credit

36) Where credit is extended to a consumer more than seven days after it was anticipated to be extended, the consumer should be entitled to a rebate of the credit charges based on the same calculations described in recommendation 32.

Method of Determining Credit Card Balances

37) The provisions in the Consumer Protection Act requiring credit grantors to use the "previous balance" method of determining credit card balances should be reviewed, with a view to making the method of determining balances uniform across all industries in Ontario (retail, financial, etc.)

38) The common method could be the average daily balance method, but such a proposal would have to be fully vetted with members of the retail industry, who commonly use the previous balance method.

Statements of Account

39) Rules should be established regarding statements of

account to be furnished to consumers with long-term debt obligations. It is recommended that consumers be entitled to such statements free of charge anytime, up to once a month. Beyond that, sellers and lenders may charge consumers a reasonable fee for the statements.

Mailing Statements and Posting Payments on Time

40) Rules respecting the mailing of statements or the posting of payments to consumers' accounts should be considered, but only if it is established that Ontario credit grantors are not performing these obligations promptly.

Returned Goods

41) Consideration should be given to requiring merchants to notify credit card issuers promptly of any returned goods.

Credits to Consumers' Accounts

42) Research should be conducted to determine the practice of credit card issuers with respect to surpluses in consumers' accounts. If it appears that surpluses are being held for inordinate amounts of time to the detriment of consumers, rules should be considered requiring issuers to refund such surpluses to consumers after a certain period of time (e.g. within six months).

Access to Consumers' Bank Accounts

43) Financial institutions which issue credit cards should be prohibited from having access to the deposit accounts of their customers without the express consent of the customers.

Priority of Payments

44) Research should be conducted to determine whether there are any problems in Ontario with respect to the manner in which credit grantors apply consumers' payments towards debts. If there appears to be a problem, consideration should be given to requiring credit grantors to apply payments in the following order:

- first, toward the payment of credit charges;
- second, toward penalty or other charges;
- third, toward the principal debt (B.C.).

Consideration should also be given to prescribing further payment rules when a consumer incurs multiple debts with the same seller or lender.

Cash Discounts

45) Research should be conducted to determine whether credit card issuers are preventing merchants from offering lower prices to cash customers than to credit card customers. If

such a practice exists, consideration should be given to prohibiting it.

Unsolicited Credit Cards

46) Further research should be conducted to determine the extent to which lenders and sellers are sending unsolicited credit cards to consumers, and whether such marketing is appreciated or disliked by consumers. If there is evidence that such a practice is undesirable, consideration should be given to reviewing Ontario's regulatory approach to the issue, and to prohibiting the practice altogether.

Increasing Consumers' Credit Limits

47) Research should be conducted to determine whether unsolicited increases in credit limits are a problem in Ontario, and if so, whether lenders should be required to obtain customers' consent before doing so.

Unauthorized Use of Credit Cards

48) A consumer's liability for the unauthorized use of his or her credit card should be limited to $50. However, if a consumer notifies a credit issuer of the loss or theft of a card, the consumer should not be liable for any unauthorized purchases made after the notification, since credit card issuers have the means at their disposal to notify their participating merchants of the loss or theft of the card, whereas the consumer does not.

Consumers should be entitled to notify card issuers of losses or thefts verbally, as opposed to in writing. Consideration could be given to requiring consumers to confirm their verbal notice in writing within seven days of giving the verbal notice, in order to eliminate potential problems of proof of notification.

Credit card issuers should be required to inform consumers in their master agreements and billing statements of the name, address and telephone number of the person to contact in the event of loss or theft of the card, and of the consumer's potential liability of $50. if the issuer is not notified. (These recommendations have already been made under Part I, regarding disclosure).

If a consumer claims that a purchase was not authorized by him or her, the burden is on the credit card issuer to prove that the purchase was authorized (e.g. by furnishing a copy of the invoice with the consumer's signature on it).

Billing Errors

49) Research should be conducted into the manner in which Ontario credit grantors resolve disputes over billing errors with their customers. If evidence suggests that errors are

not being resolved in a satisfactory manner (quickly, without undue adverse effects on a consumer's credit rating, etc.), consideration should be given to enacting error resolution rules similar to those in Quebec and the United States. There, credit grantors must resolve disputes quickly, and consumers' credit ratings are protected from being adversely affected without due process.

Electronic Fund Transfers (EFT's)

50) Research should be conducted into how well electronic fund transfer systems are working for Ontario consumers. Do financial institutions resolve billing disputes with their customers in a satisfactory manner? Is sufficient information presented to consumers in their EFT contracts with financial institutions? Are there unfair practices with respect to pre-authorized transfers, such as creditors making such authorizations a precondition to the granting of credit? Are consumers able to stop payment on pre-authorized transfers and if so, how? What are the liabilities of Ontario consumers for the unauthorized use of EFT cards? Are these liabilities fair?

Similar questions were addressed in a comprehensive report prepared by an independent task force commissioned by the Ministers of Consumer and Commercial Relations, Transportation and Communications and the Attorney General in 1978 (the MacLaren Report).

The report concluded that some action was required on the part of Ontario regulators to ensure that EFTs were conducted in the interests of all parties concerned. The MacLaren Report recommended comprehensive EFT legislation for Ontario, as well as specific amendments to the Consumer Protection Act.

This report should be comprehensively reviewed and updated where necessary. Decisions should then be made, based on the research findings discussed above, regarding the need in Ontario for legislation regarding electronic fund transfers.

Part III - Consumer Remedies and Defences

Liability of Credit Grantors

51) Consideration should be given to enacting legislation similar to that in the United Kingdom and in the United States, which makes credit card issuers and purchase-money lenders who enter into agreements with merchants regarding the extension of credit to consumers, equally liable for defects, breach of contract, and misrepresentations as the merchants themselves.

Limitations on Liability

52) It is proposed that a credit grantor's liability for defective products, misrepresentations, and the like should be equal to that of the retailer. However, that liability should be assertable by a consumer only as a defence to an action by the credit grantor.

If further limitations on a credit grantor's liability are considered desirable, the liability should be limited to the amount owing to the credit grantor under the contract.

Cooling-off Period for Credit Purchases

53) Research should be conducted into the need in Ontario for a universal cooling-off period for large credit purchases. Such a provision would allow consumers to cancel credit contracts at any time up to performance of the contracts (delivery, receipt of loan money, etc.). Consumer groups, poverty groups, credit counsellors, and others, should be consulted to determine whether such a cooling-off period would alleviate some of the problems experienced by their clients with respect to credit (problems such as over-extension, impulse shopping and high-pressure sales tactics). The implications of a cooling-off period for credit purchases should also be fully reviewed.

Cancellation of Installment Sales Contracts

54) Research should be conducted into the need for a legislative provision allowing consumers to cancel long-term debt obligations by returning purchased goods to the seller and fully compensating the seller for any depreciation of the goods. The implications of such a provision should also be fully reviewed.

Guarantors

55) Consideration should be given to giving guarantors of consumer credit agreements the same rights of disclosure, cancellation, and notice (e.g. of default) as consumers (as is the case in Manitoba, B.C. and Colorado).

56) To ensure that guarantors are fully aware of the extent of their potential obligations, creditors should be required to furnish guarantors with a prescribed statement informing them of their potential liability for the consumer's debt. As with other disclosure requirements (see discussion under Part I - Disclosure), this notice should be required to be given to the guarantor both verbally and in writing.

Part IV - Default

Late Payment or Default Penalties

57) Research should be conducted to determine whether credit grantors are charging consumers excessive late payment or default charges. If they are, consideration should be given to imposing reasonable limits on the amounts of default charges creditors may impose.

Relief From Forfeiture

58) Research should be conducted into the extent to which "acceleration clauses" (requiring the immediate payment of an entire debt once a consumer defaults on an installment payment) are used in Ontario, and whether they are employed in a manner detrimental to the interests of consumers. If the latter is the case, consideration should be given to prescribing rules regarding acceleration clauses, such as providing consumers with written notice and with sufficient time to remedy the default by making the required installment payment.

59) Research should be conducted to determine the need in Ontario to authorize consumers to petition a court for relief during debt recovery proceedings. Are there unfair practices in the present debt collection process that would be curtailed or rectified by such a provision? Would consumers use such a provision?

These are questions that can best be answered, it is submitted, by extensive consultation with the Ontario public.

Repossession and Seizure

Sections 22 + 23 of The Consumer Protection Act

60) The seizing of "cross-collateral" in order to satisfy a debt on an installment sales contract should be prohibited, as opposed to being "unenforceable".

61) The repossession of goods after 2/3 of the purchase price has been paid should be prohibited as opposed to being "unenforceable", except with leave from a court.

62) Consideration should be given to setting out factors which a court may consider in deciding whether or not to grant leave for repossession under Section 23. Consideration should also be given to stating clearly in the legislation that a court, in entertaining such an application, may allow the repossession, disallow the repossession or change any of the repayment terms of the contract.

Taking Possession

63) Consideration should be given to setting out clear rules regarding the means by which creditors may take possession of goods from consumers' homes in order to satisfy judgments. This is particularly appropriate in light of the Canadian Charter of Rights and Freedoms, which prohibits unreasonable search and seizure.

64) Consideration should also be given to requiring creditors to provide written notice of repossession to consumers. Such notice should inform the consumer of his or her rights and obligations under the contract and under any relevant legislation, and should provide sufficient time for the consumer to remedy any default.

Exemptions From Seizure

65) The exemption provisions of the Execution Act (provisions that protect consumers from having all of their essential goods seized on default) should be reviewed to determine whether they should be changed or revised in order to reflect current prices and the needs of today's debtors. Consideration should be given to prescribing the amount of such exemptions by regulation instead of by legislation, so that they may be more readily adjusted in the future.

Sale of Repossessed Goods

66) Consideration should be given to consolidating the resale rules set out in the Ontario Personal Property Security Act into a new Ontario Consumer Credit Act.

"Seize or Sue"

67) Research should be conducted into the need for a "seize or sue" law. Are repossessed goods being undersold with frequency? Do deficiency judgments create undue hardships for consumers? What have the effects of "seize or sue" laws been in other jurisdictions? Have they curtailed unfair collection practices?

Wage Garnishment

68) Consideration should be given to reviewing the exemption granted to credit unions with respect to wage assignments. What was the rationale for such an exemption, and is the rationale still valid?

69) Some thought should be given to delineating the similarities and differences between wage assignments and pre-authorized fund transfers, and whether the same, or different, rules should apply to both.

70) The provisions of the Ontario Wages Act regarding wage garnishment should be incorporated, along with the credit

provisions of other Ontario statutes, into a comprehensive Consumer Credit Act.

Part V - Trade Practices

Unconscionable Credit Transactions

71) If the Ontario Business Practices Act is amended to include money transactions, consideration should be given to repealing the Ontario Unconscionable Transactions Relief Act, as it would then be redundant.

If the Ontario Business Practices Act is not so amended, consideration should be given to folding the five provisions of the Unconscionable Transactions Relief Act into the proposed Consumer Credit Act.

Equal Credit Opportunity

72) It is important to determine whether the Equal Credit Opportunity Guidelines and Principles, adopted by the Ontario government in 1975, are in fact working.

It is proposed that consultation with the Ontario Women's Directorate be undertaken on this issue, in order to determine the extent of any perceived discrimination at this against women in the granting of credit.

In addition, in view of the importance of ensuring that there be no discrimination in the granting of credit on the basis of colour or national origin, it would be beneficial to consult with the Ontario Human Rights Commission, to determine whether this organization has received any complaints in that regard.

Finally, consultations should also be undertaken with the Ontario Advisory Council for Disabled Persons and the Ontario Advisory Council on Senior Citizens in order to determine whether the handicapped or the elderly have experienced any discrimination in the granting of credit.

It is generally recommended that updated principles for equal credit opportunity be reflected in the revised legislation, following consultations with specific organizations as well as with the credit granting industry.

Soliciting in the Home; Soliciting Minors

73) Research should be conducted, by way of public consultation, to determine whether credit grantors are engaging in the high-pressure sales tactics, either in consumers' homes or with respect to minors. If such practices appear to be prevalent, consideration should be given to prohibiting them.

Oppressive Clauses

74) Research should be conducted into the types of clauses which credit grantors in Ontario use in consumer credit contracts. If they are oppresive, or are otherwise objectionable, consideration should be given to prohibiting them.

Part VI - Miscellaneous Issues

Pawnbroking

75) The Ontario Pawnbrokers' Act should be reviewed to determine:

a) whether it is working to protect the consumer-pawnor;
b) whether its provisions need to be updated.

Consideration should also be given to folding the provisions of the Pawnbrokers' Act into the proposed Consumer Credit Act.

Credit Insurance

76) Research should be conducted into the use and practices of credit insurance in Ontario. If there is evidence that unfair practices are being engaged in to the detriment of consumers, consideration should be given to enacting credit insurance rules similar to those enacted by other jurisdictions.

Exemptions from Consumer Credit Legislation

77) The implications of any new consumer credit legislation for Ontario should be fully reviewed, and exemptions for certain types of transactions should be provided where the application of the legislation would be inappropriate (e.g. overdrafts).

78) The rationale for exempting credit unions and public utilities from the Ontario Consumer Protection Act should be reviewed, and the monetary limit of $50 should probably be revised upward.

79) Consideration should be given to including real estate transactions (i.e. mortgages) in a revised Ontario Consumer Credit Act. (The recent Ontario Law Reform Commission's "Report on the Law of Mortgages" would assist policy makers in this regard).

Policy Option

80) It is recommended that Ontario continue its review of consumer credit laws with the assistance of a royal commission, and that the commission report its findings and

recommendations to the Ontario cabinet within one year's time.

IMPORTANT FOOTNOTE TO THIS PROPOSED POLICY OPTION

After this recommendation was formulated, a decision was made by the Ministry of Consumer and Commercial Relations to set up working groups to analyze all of the research of the Legislative Review Team, and to continue the consultation process. As the target date for introduction of the new legislation has been extended by 1 year, the Credit working group in the Ministry should be able, with sufficient resources, to undertake the work originally proposed to be done by a royal commission.

29. Analysis of the Collection Agencies Act

ANALYSIS OF THE COLLECTION AGENCIES ACT

BACKGROUND

For the purposes of this report, the debt recovery industry is defined to include all individuals or corporations that engage, either directly or indirectly through an agent, in activities designed to recover debt. The industry is usually associated in the public's mind with debt collection agencies; that is, businesses which collect debts owing to others. These agencies are commonly referred to as "professional collectors."

There are many other participants in the industry, however, including creditors who collect debts on their own behalf. These include the major retail stores, banks, loan and trust companies, financial corporations, and other creditors who pursue debts, frequently through specialized collection departments. Any creditor may be a participant in the industry from time to time if forced to take steps to recover money from a recalcitrant debtor.

Many small businesses and self-employed professionals without sufficient resources to efficiently collect debts turn to the "professionals," the debt collection agencies, for assistance. In these circumstances, they are also participants in the debt recovery industry.

Private bailiffs engaged by creditors to enforce their remedies by repossessing property are also participants in the debt recovery industry, as their activities are designed to recover debt, although through the sale of repossessed property. It is also not uncommon for the debtor to pay a bailiff the money owing rather than suffer repossession of property; in this event, the bailiff literally becomes a debt collector.

The policy proposals in this report will address the debt recovery industry with this broad understanding of the term. At present, the activities of debt collection agencies are regulated under the Collection Agencies Act, and the Debt Collectors Act. Private bailiffs are governed by the Bailiffs Act. The debt recovery activity of creditors on their own behalf remains unregulated.

GENERAL PROBLEM AREAS

1) The act presently only regulates professional collectors, whereas creditors that collect on their own account (for instance, major retail stores, banks, loan and trust companies,and financial corporations) are not governed by the Act.

The statutes of British Columbia, Alberta, Manitoba and the Yukon, on the other hand, have broader application and include creditors collecting their own debts.

2) The debt collection activities of private bailiffs are presently unregulated. The Bailiffs Act does not establish a list of prohibited practices for private bailiffs engaged in collection activity.

It has been recognized by the British Columbia Law Reform Commission that the repossession and eviction activities of private bailiffs are, in essence, debt collection activities, and should be governed by the prohibited practices provisions of debt recovery legislation. Both British Columbia and Manitoba have extended the application of their prohibited practices provisions to include private bailiffs.

3) The review of Ministry consumer complaints files reveals a number of violations of the prohibited practices provisions of the Act, as well as a number of unfair practices not presently covered by the list of prohibitions.

The project team reviewed 10% of the 1986 consumer complaint files, and determined that complaints with respect to "credit" comprised 3.4% of all the complaints made. The report concluded that the majority of complaints regarding credit involved harassment by creditors or collection agencies.

4) There is presently no effective remedy in criminal or civil law to redress the damages suffered by a victim of an unfair collection practice.

Many unfair collection practices, although not extreme enough to warrant criminal prosecution, may still exceed the limits of reasonable collection practices, and should, therefore, be subject to a civil remedy.

A number of jurisdictions have effectively handled this problem by the creation of a general offence of harassment. This provision exists in the debt collection legislation of the United Kingdom, the United States, Australia, British Columbia, Quebec and Nova Scotia.

5) In view of recently escalating premiums in the liability insurance market, it has become very difficult for collection agencies to obtain bonds. At issue is whether an industry operated compensation fund would be a suitable replacement for bonding.

SPECIFIC ISSUES

1) Should all creditors who collect their own debts be bound by legislation with respect to debt recovery?

2) Should the debt collection activities of private bailiffs

be regulated under the proposed legislation?

3) Should a general offence of harassment be created, and should any additional specific prohibitions be added to the legislation?

4) What additional remedies should be provided to allow "self-enforcement" by aggrieved consumers?

PROPOSED DIRECTION

1) The Collection Agencies Act and the Debt Collectors Act should be repealed and their provisions integrated into the new foundation statute - the Consumer Protection Code.

Generic regulatory and enforcement provisions of the foundation statute should be applicable to the debt recovery industry, with any necessary tailoring made by way of regulation.

The provisions prohibiting collection practices, which are presently contained in the body and regulations of the Collection Agencies Act and the Debt Collectors Act, should be amalgamated and incorporated under one heading in the foundation statute.

2) The provisions prohibiting unfair collection practices should apply to all who engage, either directly or indirectly, in debt collection activities, including private bailiffs engaged in repossessing goods and evicting tenants.

3) A general offence of harassment should be created to prohibit unfair collection practices, and it should be followed by a list of specific prohibited practices.

4) The list of prohibited practices should be expanded to prohibit communications with the debtor at a time or place stated by the debtor to be inconvenient.

5) The list of prohibited practices should be expanded to prohibit acts to collect or attempt to collect money from a person not liable for the debt.

6) The list of prohibited practices should be expanded to prohibit collection efforts by more than one collector. A prior written assignment of account from collector to collector should be required.

7) In the event that a general offence of harassment is not created in the legislation, the list of prohibited practices should be amended to prohibit unfair repossession and eviction activities of private bailiffs.

8) A new obligation should be created to require a collector to follow a stipulated validation procedure if the debtor

gives written notice of dispute of the debt or the amount.

This obligation would provide that within five days after initial contact, the collector must give written notice to the consumer advising as to the amount of the debt, the name of the creditor, and the consumer's validation rights.

9) A new obligation should be created, requiring the collector to cease all communication with the consumer, following written notice by the consumer that he or she refuses to pay or wishes all communications stopped.

10) The present bonding requirement should be replaced by a requirement that the collection agencies make proportionate contributions to an industry-operated compensation fund under the supervision of the Registrar.

11) The provision requiring registration of sales representatives employed by collection agencies to solicit business from creditors should be repealed.

12) The written examination requirement imposed on officers and directors actively engaged in operating a collection agency should be extended to senior management employees, if an officer or director is not active in the business.

13) The legislation should not be amended to provide for temporary registration of collectors, pending the registrar's decision as to registration.

14) A civil remedy should be created to allow an aggrieved consumer to claim damages for unfair collection practices.

15) The civil remedy provision should provide for a minimum damage award of $2,000.

16) A provision should be introduced which would release the debtor from the debt obligation upon proof of a violation of the general offence of harassment and/or a specific prohibited collection practice. The defence should be subject to the right of the collector to establish that the unfair collection practice was unintentional and a result of a bona fide error.

30. Debtors' Assistance Programs

DEBTORS' ASSISTANCE PROGRAMS

BACKGROUND

The amount of credit extended to Canadian consumers has grown dramatically since the end of the Second World War, and with it, the problems of consumer debtor insolvency. The relative strength of the postwar economy, the resulting increase in the consumption of consumer goods, largely financed through personal loans and credit arrangements, and the successful marketing of the use of credit cards are several of the factors which have contributed to the increased use of credit.

The amount of consumer credit outstanding in Canada, excluding mortgage debt, is estimated to have increased from $1 billion in 1949, to $8.6 billion in 1967, to $31.1 billion in 1977, to $71.2 billion in 1986. Statistics with respect to consumer debtor insolvency are not available to indicate the extent to which consumers have overburdened themselves with debt obligations, but the dramatic increase in the number of consumer bankruptcies over a similar time period is evidence of the problem. In 1967, 1,549 Canadians declared personal bankruptcy; 21,765 Canadians declared personal bankruptcy in 1986.

However, the remedies available to an overburdened consumer debtor have not evolved significantly during this period. Bankruptcy remains the "ultimate solution" for the beleaguered debtor. In 1966, a further alternative was made available with the introduction of Part X to the federal Bankruptcy Act; under its provisions, consumer debtors can gain an extension of time within which to pay their debts by applying to the court for a consolidation order. However, this remedy is only available in those provinces which have chosen to "opt-in", so is not available to consumer debtors in Ontario.

Until 1984, a similar remedy was available to Ontario debtors who had judgments for debt issued against them from any court in Ontario. Application could be made to the Small Claims Court for an order consolidating these judgments and extending the time to pay. A legislative change in the mandate of the Small Claims Court has limited this remedy, however, so that a consolidation order can now only be secured with respect to judgments issued from the Small Claims Court.

Since the mid 1960's, a number of non-profit, government-approved credit counselling agencies offering voluntary consumer debtor assistance services have been established throughout the province. These agencies were initially under the jurisdiction of the Ministry of Consumer and Consumer Relations. However, they were transferred to the Ministry of Community and Social Services in the early 1970s.

In addition to providing credit counselling services, the

agencies can negotiate an arrangement for debt payment with creditors on behalf of a debtor. In general, the debtor can thus gain an extension of time to pay. However, these "orderly payment of debt" services are voluntary only; each creditor must agree to participate in the arrangement in order to be bound by its terms. The consumer debtor in Ontario has no remedy available whereby he or she can compel all creditors to enter into an arrangement that is acceptable to the majority.

The development of new remedies, in order to provide a range of alternatives to bankruptcy and the informal services offered by the credit counselling agencies, has long been viewed as a necessity for consumer debtors in Ontario.

The Goals of a Consumer Debtors' Assistance Program

Several Advisory Committees and the Ontario Law Reform Commission have examined various alternatives for a consumer debtors' assistance program, and have outlined the following goals:

- to assist, and, where necessary, rehabilitate the consumer debtor through credit counselling services and education programs;
- to provide a relatively simple, quick and inexpensive system for the orderly payment of debts, as an alternative to bankruptcy;
- to provide a method whereby the consumer debtor can keep his or her assets (which would otherwise be liquidated in bankruptcy proceedings) while paying debt obligations;
- to allow the consumer debtor to maintain his or her integrity and avoid the stigma of bankruptcy;
- to enable creditors to receive higher payments than they would otherwise collect in bankruptcy proceedings.

The Major Components of a Consumer Debtors' Assistance Program

In order to meet those goals, four major services should be provided in a consumer debtors' assistance program:

1) Counselling services

These services generally include counselling with respect to budget preparation, financial management and the use of consumer credit.

2) An "orderly payment of debt" program

In an "orderly payment of debt" program, an arrangement is

made between the consumer debtor and his or her creditors for the debtor to make payments to an intermediary over a period of time. These payments are then distributed by the intermediary to the creditors, in accordance with the arrangement and/or any governing legislation.

In Ontario, non-profit, government-approved credit counselling agencies act as intermediaries and negotiate a consensual arrangement. Many other jurisdictions have a legislated program in which an Administrator, Board or other official acts as intermediary. The intermediary issues a "consumer proposal" to be accepted or rejected by the creditors; if accepted, an arrangement is concluded.

The types of arrangements include:

- a "consolidation arrangement", wherein the debtor agrees to pay the full amount of the debt owing over an extended period of time;
- a "composition arrangement", wherein the debtor agrees to pay part of the amount owing over an extended period of time, up to an amount acceptable to the creditors;
- a combination of the two, wherein the debtor agrees to pay some debts in full, and the balance owing in part, over an extended period of time.

3) Negotiating services

As an extension of the counselling services offered, the intermediary (in Ontario, the credit counselling agency) may intervene on behalf of the debtor with a third party, usually a creditor. Intervention may be necessary, for example, to help the debtor negotiate a problem or establish a payment schedule with a creditor.

4) A consumer education program

A "preventive" consumer education program is generally offered to heighten consumer awareness in the use of credit. Such programs include lectures to school groups, lectures or seminars to other consumer groups, and the publication and distribution of informational literature.

GENERAL PROBLEM AREAS

In 1966, the federal Bankruptcy Act was amended to provide for an "Orderly Payment of Debt" program in Part X. Under this program, consumer debtors can make application for a consolidation order and gain an extension of time to pay their debts. The provinces were given the option of "opting-in" and administering the program provincially. Ontario chose not to opt-in, and directed funding to the establishment of more

credit counselling agencies instead.

The credit counselling system in Ontario is said to be "voluntary" as the agencies are incorporated charitable institutions and their activities are not bound by governing legislation. Arrangements are made on a consensual basis: only those creditors that agree to participate will be bound by the arrangement negotiated.

The "stereotypical case" of an agency has changed in recent years from a family including a husband and a wife, with 2 to 5 children, to the single person, or to two working adults and single parents with children.

There are several deficiencies in the Part X Orderly Payment of Debt program. For example, it only provides for consolidation orders; there is no provision for composition orders or arrangements. Under Part X, the debtor can only gain an extension of time within which to pay his/her debts; he/she cannot gain a release from payment of the debt in full. In addition, a secured creditor can elect to repossess the secured property at any time, even though a consolidation order is in effect and the debtor is meeting his/her payment obligations. A creditor can petition to place the debtor in bankruptcy at any time, notwithstanding a consolidation order.

At issue is whether Ontario should opt-in to an amended Part X program when the federal government reforms the Bankruptcy Act. Also, what are the specific policies that ought to be incorporated into an amended orderly payment of debt program to assist consumer debtors?

Another issue is whether there should be transfer of administrative responsibility from the Ministry of Community and Social Services to the Ministry of Consumer and Commercial Relations, if the Ontario government were to participate in a legislated consumer debtors' assistance program under the federal Bankruptcy Act. The financial implications of this transfer would have to be considered.

SPECIFIC ISSUES

1) What should be the major components of a consumer debtors' assistance program?

2) What benefits could be provided by a legislated program, as opposed to a voluntary system?

3) Should Ontario enact its own legislation, or "opt-in" to an amended Part X program under the federal government's Bankruptcy Act?

4) Should small business people who are personally liable for debts be included in an amended Part X program?

5) How should credit counselling agencies be integrated into a legislated program, and what changes, if any, should be made to the agencies?

6) Should creditors be required to assist with the funding of a legislated program?

7) Should a statement of consumer debtors' rights be included in the proposed Consumer Protection Code?

8) Should the responsibility for credit counselling be transferred from the Ministry of Community and Social Services to the Ministry of Consumer and Commercial Relations?

PROPOSED DIRECTION

Legislated program

1) The present voluntary system in Ontario should be integrated into a legislated consumer debtors' assistance program.

Opt-in to Part X

2) Ontario should agree in principle to "opt-in" to a consumer debtors' assistance program established by amendment to Part X of the Bankruptcy Act.

Services to be provided

3) An amended Part X program should provide credit counselling, advocacy and consumer education services, in addition to an Orderly Payment of Debt program.

Counselling services

4) The Administrator of an amended Part X program should be empowered to ensure that counselling services are available to consumer debtors, and should have a legislative duty to encourage their use. However, the administrator should not be empowered to compel the debtor to attend for counselling.

Advocacy services

5) The services of an amended Part X program should be expanded to include advocacy on behalf of the consumer debtor.

6) The Administrator should be empowered to disallow a creditor's claim in an Orderly Payment of Debt arrangement, if it arose from a harsh or unconscionable transaction, or where the interest rate charged was excessive, if the claim could be 1disallowed under federal or provincial legislation. The debtor and the creditor should have the right to appeal this decision to the Court.

7) The Administrator should be empowered to disclaim executory contracts and leases on behalf of the consumer debtor. A creditor subject to such a disclaimer should have the right to claim any resultant damages in an Orderly Payment of Debt arrangement.

Consumer Education Services

8) The administrator of an amended Part X program should be empowered to provide or finance preventive consumer education services.

Administration of the program

9) An amended Part X program should be administered by a provincially-appointed Administrator. The Administrator should be assisted by Deputy Administrators, appointed from the credit counselling agencies throughout the province. The staff and facilities of the present voluntary system should be integrated into the legislated scheme.

Regulatory power

10) The provinces should be granted the power in an amended Part X program to enact regulations, subject to the approval of the Governor General in council; i.e. the federal Cabinet.

Eligibility for the program

11) An amended Part X program should define "consumer debtor" as:

i) an individual having difficulty paying debts;

ii) with total debts less than $40,000, excluding debts secured against a principal residence.

12) The Lieutenant Governor in Council, (the provincial Cabinet, subject to the approval of the federal Cabinet) should be empowered to amend the total debt limitation by regulation so that the restriction can evolve to ensure provision of services to the consumer debtor.

13) Small business people should be eligible to participate in an amended Part X program to resolve their personal debts, regardless of the legal structure in which they were incurred.

Funding

14) A shortfall in funding may arise, as a result of a decrease in community contributions following introduction of a legislated program. If this occurs, it should be offset by a levy assessed against the funds collected in Orderly Payment of Debt arrangements.

15) The levy should be deemed to be payments made to the creditors, and thus assessed against creditors only.

16) Debtors should pay a nominal fee only, similar to the $10 fee presently assessed, for services provided.

17) The Lieutenant Governor in Council (the provincial Cabinet, subject to the approval of the federal Cabinet) should be empowered to prescribe the amount of the levy to be assessed by regulation, so that the levy can evolve to meet funding needs. Initially, the levy should be set at 20% of the money collected in an Orderly Payment of Debt arrangement.

Eligibility for orderly payment of debt services

18) A legislative provision should be incorporated into an amended Part X to provide:

Where the administrator is satisfied that the debtor:

i) is entitled to make an arrangement;

ii) is able to pay for the essential ongoing living and business expenses of him/herself and dependents, including, but not limited to, food, rent or mortgage payments, clothing, medical treatment, child, spousal or parental maintenance payments, transportation, insurance premiums, utilities, union dues and employee's wages; and

iii) is able to pay any unpaid fine or penalty imposed by a court, and any debt arising out of a recognizance or as a result of his or her acting as a surety under the provisions of the Criminal Code,

The administrator shall prepare a proposed arrangement on behalf of the debtor.

Joint applications

19) An amended Part X program should provide for joint applications for an arrangement by spouses.

20) "Spouse" should be defined as in the Family Law Act, 1986:

"Spouse" means a man and woman who,

a) are married to each other, or

b) have together entered into a marriage that is voidable or void, in good faith on the part of the person asserting a right under this act.

Types of arrangements

21) An amended Part X program should provide for consolidation and composition arrangements, and a combination of the two. Provision should also be made for an arrangement to include any other provision "not inconsistent with" the Part.

Term of arrangements

22) An amended Part X program should provide for a maximum three-year term of arrangement. The administrator should be empowered to extend the term to a maximum of four years.

Acceptance/rejection of the proposal

23) A proposal for an arrangement should be deemed to be accepted, and bind all creditors given notice of the proposal, if:

i) the Administrator is not required to call a meeting of the creditors, or

ii) the proposal is not rejected at a meeting of the creditors.

Meeting of the creditors

24) The Administrator should be required to call a meeting of the creditors if asked to do so by creditors representing over 50% of the votes allocated.

25) Creditors should be allocated one vote per $100 or less of each admissible claim.

26) If a meeting is called, the creditors should be able to reject a proposal by a majority vote.

Amendment of the proposal

27) If the creditors, by majority vote, decide to amend a proposal, and this amendment is not agreed to by the debtor and the Administrator, the proposal should be considered rejected.

Effect of arrangements

28) The debtor should be released from all debts included in the arrangement if the terms of the arrangement are complied with.

29) No person should be able to take action against the debtor with respect to a released debt even if the debtor had made an express or implied agreement to pay the debt.

30) The release of a husband or wife from a debt included in a joint arrangement should automatically release the other spouse from liability for that debt.

31) Release of the debtor should not affect the liability of a person who was also liable with the debtor, such as a partner or guarantor.

32) If a debt comes to light only after the Administrator's final distribution under the arrangement, the rights of that creditor should not be affected by the arrangement, and the debtor not released from that claim.

Stay of proceedings

33) A stay of proceedings should be imposed from the time a debtor files an application for an arrangement.

34) The stay should remain in effect until:

i) the debtor's application is withdrawn or rejected by the Administrator;

ii) the proposed arrangement is rejected by the majority of creditors;

iii) the arrangement is annulled; or

iv) a court orders otherwise, upon such terms and conditions as it finds just.

35) If the debtor's application is rejected, no additional stay of proceedings should be granted for a six-month period, although the debtor should be entitled to submit other applications during this period.

36) Creditors should be granted the right to apply to the court for appointment of an interim receiver with respect to the property of the debtor.

37) The Administrator should be empowered to require an assignment of any debts payable to the debtor; for example, future wages.

Essential property

38) The Administrator should be empowered to require a secured creditor to participate in an arrangement, rather than realize on the security, if the Administrator determines that the secured property is essential to the debtor's ability to meet his or her obligations under the arrangement.

39) In considering whether property is "essential", the Administrator should be required to consider all of the circumstances of the case, including whether the property would be exempt from execution under other legislation.

40) The Administrator should be empowered to grant a preference in distribution of money to a secured creditor prevented from realizing on security.

Deficiency claims

41) If a secured creditor elects to realize on the security rather than participate in the arrangement, a deficiency claim should be barred, and the debtor released from the claim. This would be subject to a revival of the creditor's rights if the arrangement was subsequently annulled.

Realization on security

42) Duties should be imposed on secured creditors who realize on security to:

i) act honestly and in good faith;

ii) realize or otherwise deal with the property in a timely and commercially reasonable manner, and

iii) forthwith report to the Administrator the conservatory measures taken, the method and results of any realization and any other dealings in respect of the property.

43) The creditor should be made liable to the debtor for any damages suffered as a result of a breach of these duties.

44) Any excess proceeds should be remitted to the administrator.

Interest on debt

45) Creditors should be entitled to include the contractually stipulated rate of interest, calculated to the date of the application for a proposal, in their claim submitted in an arrangement.

46) In a composition arrangement, interest should not accrue due on claims after the date of application for a proposal.

47) In a consolidation arrangement, interest should accrue due to all creditors included in the arrangement at the rate of 5% a year.

Effect on bankruptcy

48) The rejection of a consumer proposal should not automatically cause the debtor to enter bankruptcy.

49) The acceptance or deemed acceptance of a proposal should effectively dismiss any bankruptcy petition pending against the debtor.

Reprisals by an employer

50) An employer should be prohibited from dismissing, suspending, demoting or otherwise disciplining an employee, or

threatening any of these actions, on the ground that the employee has applied for or entered into an arrangement, or made an assignment of wages to the Administrator.

Rehabilitation through self-administration

51) The Administrator should be empowered to permit the debtor to make the payments required under the arrangement directly to the creditors, after the debtor has complied with the terms of the arrangement for six consecutive months.

Duties of the consumer debtor

52) The debtor should have a duty to disclose all information relevant to an arrangement to the Administrator, including, but not limited to:

i) a list of all creditors, the amount owing to each creditor, the nature of the debts and any security given;

ii) a statement of income and property;

iii) a statement of all probable sources of present and future income and property;

iv) his or her business or employment and that of his or her spouse;

v) details about dependents;

vi) a list of necessary ongoing living and business expenses of the debtor and dependents;

vii) any agreements concerning the disposition or settlement of property, and any transfers or gifts of property, made in the last five years, other than in the ordinary course of business.

53) The administrator should be empowered to require the debtor to:

i) attend for an examination under oath;

ii) prepare a budget;

iii) examine claims filed by creditors;

iv) attend a meeting of creditors and give such information as is reasonably required;

v) generally do whatever is necessary to assist the Administrator in making an arrangement.

54) During the term of an arrangement, the debtor should have a duty to:

i) advise the Administrator of a change of address;

ii) disclose to the Administrator any material change in circumstances, including income, property, and debts, for better or worse;

iii) generally do whatever acts or in relation to his or her income or property as are reasonably required by the Administrator.

Payments to Creditors

55) All creditors should be paid on a pro rata basis, unless:

i) otherwise provided in the arrangement; or

ii) granted a priority in payment by the Administrator.

56) The Administrator should be empowered to grant a priority in payment, at his or her discretion, to secured creditors who are obliged to participate in the arrangement rather than realize on their security because the property was determined by the Administrator to be essential to the debtor.

57) The Administrator should be directed to grant a priority in payment to creditors claiming:

i) arrears owing on a prior agreement, order or judgment for the maintenance of a child, spouse, or other dependant;

ii) up to three months' arrears of wages payable to an employee of the debtor;

iii) arrears of rent and mortgage payments on the debtors family home and business premises; and

iv) arrears owing to utility companies for electricity or water, or for gas, oil and other fuel, with respect to the debtor's family home and business premises.

Secured creditors

58) Subject to the exception with respect to essential property, secured creditors should have the right to elect not to participate in an arrangement if:

i) they have received less than two-thirds of the original debt owing; and

ii) they give written notice of their election to the administrator within 21 days from the date the administrator mailed notice of the application for an arrangement to creditors.

Admissible claims

59) Claims admissible in a proposed arrangement should be defined as liquidated, absolute claims.

60) The Administrator should be empowered to vary the arrangement, prior to final distribution, to include as late claimants:

i) unliquidated or contingent claims that have become assessable; or

ii) creditors who did not receive notice of the application for an arrangement.

61) Creditors should be required to file a proof of claim within 30 days from the date the administrator mailed notice of the application for an arrangement, or be barred from participating in the arrangement.

62) The stay of proceedings and release from claims should apply to all creditors given notice of the application for an arrangement, provided that they have not failed to file a proof of claim within the requested time period, and subject to their right to prove lack of notice for subsequent inclusion as late claimants.

Creditor's right to challenge the claim of others

63) A creditor should have the right to dispute the claim of another creditor, or request to have his or her own claim amended, if written notice is given to the Administrator within 10 days from the date the administrator mailed notice of the application for an arrangement to creditors.

64) The debtor and each creditor affected by the decision of the administrator should be granted the right to appeal the decision to the court.

Creditors' Right to Information

65) The Administrator should be required to inform creditors, upon written request, about information disclosed by the debtor.

Variation of the Arrangement

66) The Administrator should be empowered to vary the arrangement on his or her own initiative, or on the application of the debtor or a creditor, to:

i) decrease or increase the payment obligations;

ii) postpone payment obligations for a period of time;

iii) extend payment obligations for a period not to exceed

4 years from the date of the original arrangement;

iv) vary, add or delete such other provisions as the administrator shall decide; or

v) refuse the application.

67) The debtor and creditors should be granted the right to appeal the decision of the Administrator to the court.

Annulment of the arrangement

68) An arrangement should be deemed to be annulled, and the rights of creditors automatically revived, if the debtor defaults in payment for 45 consecutive days.

69) The Administrator should be empowered to extend this default period to 90 days, in addition to his or her power to vary the arrangement.

70) Creditors should be granted the right to apply to the Administrator for an annulment of the arrangement if:

i) the debtor defaults in fulfilling his duties under the amended Part X;

ii) the debtor defaults in complying with the terms of the arrangement, a direction of the Administrator or an order of the court;

iii) the debtor has absconded, or is about to abscond, in order to avoid paying his debts; and

iv) the debtor has been guilty of a fraud relative to the arrangement or with respect to the claim of a creditor.

71) The debtor and creditors should have the right to appeal the decision of the Administrator to the court.

72) The Administrator should have the power to initiate inquiries with respect to the above matters.

73) An annulment of an arrangement should not automatically cause the debtor to enter bankruptcy.

Credit counselling agencies restriction on membership

74) Enabling legislation enacted in Ontario in order to opt-in to an amended Part X program should restrict membership on the Board of Directors and Advisory Committees of the credit counselling agencies so that no more than 40% of the members are from the credit industry.

Credit counselling agencies' duty to distribute literature

75) This legislation should further place a duty on credit counsellors to distribute written literature, in a prescribed form, outlining the range of options available to an insolvent consumer debtor. This literature should be available to all those who seek the services of the agencies.

Statement of consumer debtor's rights

76) The Foundation Statute should articulate a statement of consumer debtors' rights, in order to educate the consumer as to the debtor assistance services available. For example, the Statute could provide that:

Every consumer debtor having difficulty paying debt is entitled to receive the following services from a designated agency:

i) credit counselling services, including advice on budget preparation and financial management;

ii) assistance in negotiating matters with a creditor or creditors;

iii) assistance in negotiating an arrangement with creditors for payment of debt;

iv) debt payment services, wherein the agency will act as intermediary and receive payments from the consumer debtor and distribute payments to the creditors, in accordance with the arrangement negotiated.

A "consumer debtor" is an individual

i) having difficulty paying debts;

ii) with total debts less than $40,000 excluding debts secured against his or her home.

Transfer of Ministry Responsibility

77) Ministry responsibility for the credit counselling agencies should be transferred from the Ministry of Community and Social Services to the Ministry of Consumer and Commercial Relations.

78) If a legislated consumer debtors' assistance program is implemented it should be under the jurisdiction of the Ministry of Consumer and Commercial Relations.

31. The Consumer Reporting Act

THE CONSUMER REPORTING ACT

BACKGROUND

Under the Consumer Reporting Act, registered consumer reporting agencies and their investigators are authorized to collect personal and credit information about consumers for use in the preparation of consumer reports. A consumer report means a "written, oral or other communication by a consumer reporting agency of credit or personal information, or both, pertaining to a consumer."

In order to protect consumers from the harm which may result from widespread disclosure of their information and from the use of inaccurate, incomplete or erroneous information in consumer reports, provisions are included in the Consumer Reporting Act to regulate the collection, use, maintenance and dissemination of this information by consumer reporting agencies and their clients.

Unless the consumer's authorization is obtained, information in consumer files may only be released for use in the preparation of consumer reports for consideration in connection with the extension of credit, tenancy agreements, employment purposes, the underwriting of insurance or any other direct business need for the information in connection with a business or credit transaction involving the consumer.

In addition, the Act requires users of reports to notify consumers when they order a report and when information in a report results in adverse action or the denial of a benefit to a consumer. Consumers are given the right to be informed by consumer reporting agencies of the nature and substance of all information in their files as well as the right to request corrections to the information.

GENERAL PROBLEM AREAS

1) It appears that the current structure of the consumer reporting industries requires more safeguards to be built into the legislation to enhance protection of consumers. Some users of credit information may be obtaining information from consumer reporting files without the authorization of the consumer to whom the information relates and for purposes not authorized under the Consumer Reporting Act.

2) Consumers have no right to privacy of information under the Consumer Reporting Act. Instead, the Act contains provisions which limit third party access to consumer reporting information in order to provide control over the accuracy of the information. Clarificaton is required as to the extent to which access to consumer files should be permitted for purposes of law enforcement and investigations.

3) Clarification is also required concerning notification to a consumer where a consumer has been denied a benefit based on information received from a consumer reporting agency or a person.

SPECIFIC ISSUES

1) Foreign ownership is a concern. The consumer reporting industry in Canada is substantially owned by one American company.

2) Transborder data flow of personal information (information crossing the border) is a matter requiring investigation.

3) Another concern is monopolistic control. The consumer reporting industry in Canada is substantially controlled by subsidiaries of the American company.

4) There is a conflict between the Consumer Reporting Act and the Private Investigators and Security Guards Act.

5) Compliance with the Consumer Reporting Act needs to be addressed.

6) The problem of multiple display of files needs to be resolved. In situations where there are several potential file matches, there may be display of multiple consumer files. At issue is how to prevent access to other files with the same name.

7) The differentiation between family and individual credit files must be addressed.

8) The matter of whether the Consumer Reporting Act should be amended to allow agencies to charge consumers for access to their files should be resolved.

9) Should police officers be allowed access to credit and personal information held by consumer reporting agencies for investigative and law enforcement purposes, and should they be required to adhere to the notification requirements of the Act?

10) Should the act be amended to allow consumers access to all information in their files instead of access to only the nature and substance of information on their files?

11) Should a consumer be notified automatically when a benefit has been denied because of information received from a consumer reporting agency, or a person other than a consumer reporting agency?

12) Should a consumer have a right to lodge a notice of dispute in his/her file if the consumer reporting agency refuses to amend information in their files?

PROPOSED DIRECTION

1) Foreign Ownership

The Department of Communications within the federal government should pursue this issue.

2) Monopolistic Control

The Federal Department of Consumer and Corporate Affairs should pursue the issue of monopolistic control.

3) Conflict between the Consumer Reporting Act and the Private Investigators and Security Guards Act

The collection, use, maintenance and dissemination of consumer reporting information should be regulated under the provisions of the Consumer Reporting Act.

An informal working group should be established with representatives from the Ministry of Consumer and Commercial Relations and the Ministry of the Solicitor General, to outline issues pertaining both to the structure of the industries and to the Consumer Reporting Act's application to private investigators.

4) Target Marketing/Pre-Screening

The "Consumer Reporting Amendment Act" should be passed to regulate that activity in Ontario.

5) Right to Commence an Action

The Act should be amended to give consumers the right to commence a civil action against the consumer reporting agency or user of information for loss, damage or inconvenience suffered as a result of contravention of the Act.

6) Original Files

The Act should be amended to provide that original files must be kept in Ontario.

7) Consumer Reporting Agencies

The Act should be amended to require consumer reporting agencies to notify consumers when a report about them has been requested.

8) Compliance

Inter-provincial discussions should be held to determine the most effective methods for ensuring compliance with consumer reporting legislation.

9) Multiple Display of Files

Credit reporting agencies should be allowed to furnish identifying information about consumers, such as dates of birth or unique identification numbers, in order to access accurately consumer files on requests from users.

10) Family and Individual Credit Files

The Act should be amended to provide families with the option of having family and/or individual credit files.

11) Fees

Consumer reporting agencies should be allowed to charge consumers a fee for obtaining copies of their consumer reports. Consumers should still be allowed access to their files at no charge.

12) Police Access

Police officers, acting in the course of their duties, should be allowed access to consumer files for purposes of law enforcement and investigations. It is further recommended that the Act be amended to exempt police officers acting in the course of their duties from the Act.

13) Disclosure

Consumers should be allowed access to all information pertaining to them, which is held by consumer reporting agencies. An exception should be made for certain medical information.

14) Notification

Section 10(7) of the Consumer Reporting Act should be amended to provide that, when a consumer has been denied a benefit because of information received from a consumer reporting agency, the user must automatically deliver a notice containing all of the required information rather than wait for the consumer to request the information.

15) Notice of Dispute

Consumers should be provided with a right to lodge a notice of dispute when a consumer reporting agency refuses to amend information in their files.

16) Security

Those who collect, use, maintain, or disseminate consumer reporting information should be responsible for the protection of the data in their custody or control by reasonable security safeguards.

17) Disclosure of Information for Direct Business Needs

The section of the Act which authorizes the disclosure of information in a consumer report to a person who has a direct business need for the information in connection with a business or credit transaction involving the consumer, should be removed.

18) Authorization for Obtaining Consumer Reports

Section 10 (2), (3), and (4) of the Consumer Repoting Act should be amended to give individuals/businesses the option of either notifying consumers of their intent to request a consumer report about them, or obtaining their written consent. It is further recommended that the Act be amended to provide that the consent may be contained in applications for credit, insurance, tenancy or employment.